

Chapter 21

LAND USE ORDINANCE

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Article 1. General Provisions

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Sec. 21-1.10 **Title.**

The provisions of this chapter, inclusive of any amendments, shall be known as the land use ordinance (LUO) of the City and County of Honolulu. The provisions may also be referred to as the zoning ordinance and may, to the extent practicable, contain other ordinances regulating the utilization of land pursuant to Section 6-1504 of the charter. (Added by Ord. 99-12)

Sec. 21-1.20 **Purpose and intent.**

- (a) The purpose of the LUO is to regulate land use in a manner that will encourage orderly development in accordance with adopted land use policies, including the Oahu general plan and development plans, and to promote and protect the public health, safety and welfare by, more particularly:
- (1) Minimizing adverse effects resulting from the inappropriate location, use or design of sites and structures;
 - (2) Conserving the city's natural, historic and scenic resources and encouraging design which enhances the physical form of the city; and
 - (3) Assisting the public in identifying and understanding regulations affecting the development and use of land.
- (b) It is the intention of the council that the provisions of the LUO provide reasonable development and design standards for the location, height, bulk and size of structures, yard areas, off-street parking facilities, and open spaces, and the use of structures and land for agriculture, industry, business, residences or other purposes.
- (Added by Ord. 99-12)

Sec. 21-1.30 **Administration.**

The director shall administer the provisions of the LUO.
(Added by Ord. 99-12)

Sec. 21-1.40 **Appeals.**

Appeals from the actions of the director in the administration of the provisions of the LUO shall be to the zoning board of appeals as provided by Section 6-1516 of the charter. Appeals shall be filed within 30 days of the mailing or service of the director's decision. (Added by Ord. 99-12)

Sec. 21-1.50 **Variances.**

Petitions for varying the application of the provisions of the LUO shall be determined pursuant to Sections 6-1516 and 6-1517 of the charter, including the application of the provisions relating to signs. (Added by Ord. 99-12)

Sec. 21-1.60 Temporary uses.

Uses and structures of a temporary nature shall not be governed by this chapter, unless the director determines that significant impacts upon the surrounding area warrant review, and, when necessary, the imposition of conditions on the use or structure. Conditions shall be based on impacts upon the surrounding area, and may cover hours of operation, duration of the activity, and general manner of operation. (Added by Ord. 99-12)

Article 2. Administration and Enforcement

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21-2.2	Zoning Adjustment: Grade Irregularities.

Sec. 21-2.10 Purpose.

The purpose of this article is to set forth the procedures for processing permit applications and to ensure compliance with all provisions of this chapter. Concurrent application and processing are encouraged for projects that require multiple permits. (Added by Ord. 99-12)

Sec. 21-2.20 Administrative procedures.

- (a) No permit required by this chapter shall be granted or application accepted for any use, structure or project on any zoning lot in conflict with a proposed zone change, including an amendment to or establishment of any special district, between the time the proposal is initiated by the director or the council and the time the proposal is withdrawn, or approved or denied by the council. This provision shall not apply for a period of more than one year from the date of initiation of the proposal.
- (b) If a permit required by this chapter requires a public hearing, no request for postponement of the hearing shall be allowed after notice has been published; however, the applicant may withdraw the permit application.
- (c) In the event a permit required by this chapter is denied, or in the event the applicant withdraws the permit application, one year shall elapse before the permit application is resubmitted in the same or substantially the same form; provided that if the denial or withdrawal was the result of infrastructure inadequacies and these inadequacies are subsequently corrected, then the director may accept a new application prior to the lapse of the one-year period.
- (d) The director shall notify an applicant in writing whether an application for a permit required by this chapter is complete or incomplete within 10 working days of its receipt by the director. When the application is

- incomplete the notice shall inform the applicant of the specific requirements necessary to complete the application. The application shall not be accepted by the director unless it is complete.
- (e) Applications previously approved by ordinance shall continue to be regulated by the provisions of that ordinance, except that:
 - (1) The director may administratively modify cluster housing and planned development-housing projects that were originally approved by ordinance;
 - (2) All such modifications shall be processed in accordance with current site design standards and application procedures.
 - (f) Applications previously approved, other than by an ordinance, shall continue as approved; provided, that any reference to an approving body shall be construed as the approving body contained in the applicable regulation of this chapter.
 - (g) Nothing contained in this chapter shall be deemed to prevent the strengthening or restoration to a safe condition of any building, or any part of any building, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
 - (h) The department monitors compliance with and enforces the provisions of this chapter only. Accordingly, the issuance of a permit pursuant to this chapter does not constitute the department's confirmation that the applicant has complied with any other applicable laws.
 - (i) In addition to the requirements stated in this chapter for the issuance of any permit, it shall be the responsibility of the applicant to observe and comply with all other applicable federal, state and city laws, ordinances, rules and regulations.
 - (j) All references in this chapter to a government agency or department shall mean the government agency or department specifically identified or its successor.
 - (k)
 - (1) Except as otherwise provided herein, the director may administratively authorize minor alterations, additions, or modifications to any approved permit required by this chapter, provided the minor modification request is reasonable, and consistent with the intent of the respective permit; does not significantly increase the intensity or scope of the use; and does not create adverse land use impacts upon the surrounding neighborhood.
 - (2) Subdivision (1) shall not apply to:
 - (A) Zone changes; and
 - (B) The following council approvals, except to the extent that minor modifications are permitted by the express language of the council's approving resolution:
 - (i) Plan Review Use approvals; and
 - (ii) Approvals of conceptual plans for Planned Development-Resort and Planned Development-Commercial projects in the Waikiki special district pursuant to Section 21-9.80-4(d).
 - (3) Major alterations, additions, or modifications, and other alterations, additions, or modifications excepted by subdivision (2), shall be processed under the provisions for the applicable permit or approval.

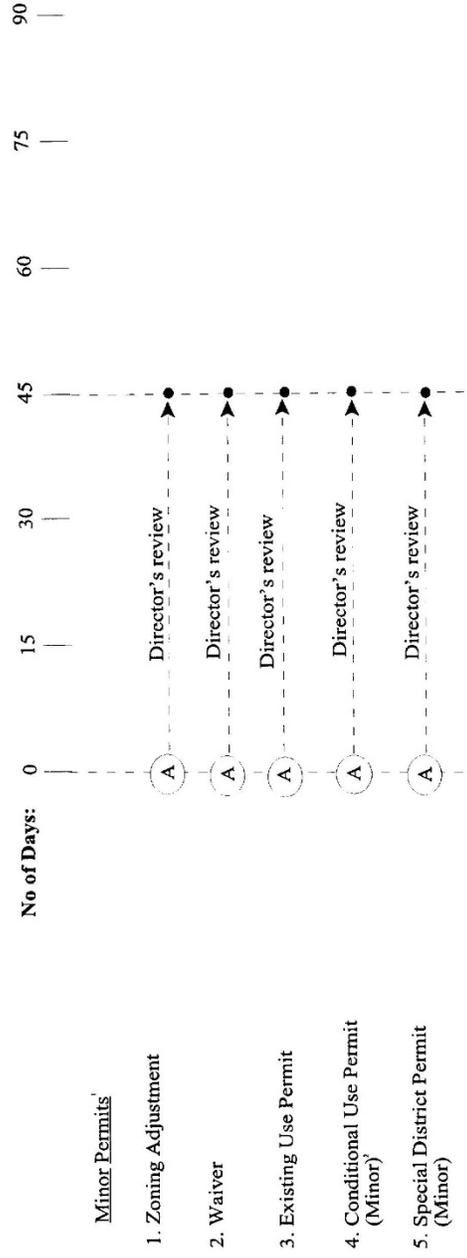
(Added by Ord. 99-12; Am. Ord. 10-19)

Sec. 21-2.30 Application procedures.

- (a) The application procedures specified in this section shall be followed in the administration of this chapter. As used in this section, "applicant" includes but is not limited to any governmental agency or entity.
- (b) Application fees are not refundable and shall be required as specified in Chapter 6, Article 41.
- (c) See Figure 21-2.1 for permit application processing.

(Added by Ord. 99-12)

Figure 21-2.1
Permit Application Processing Time



Legend

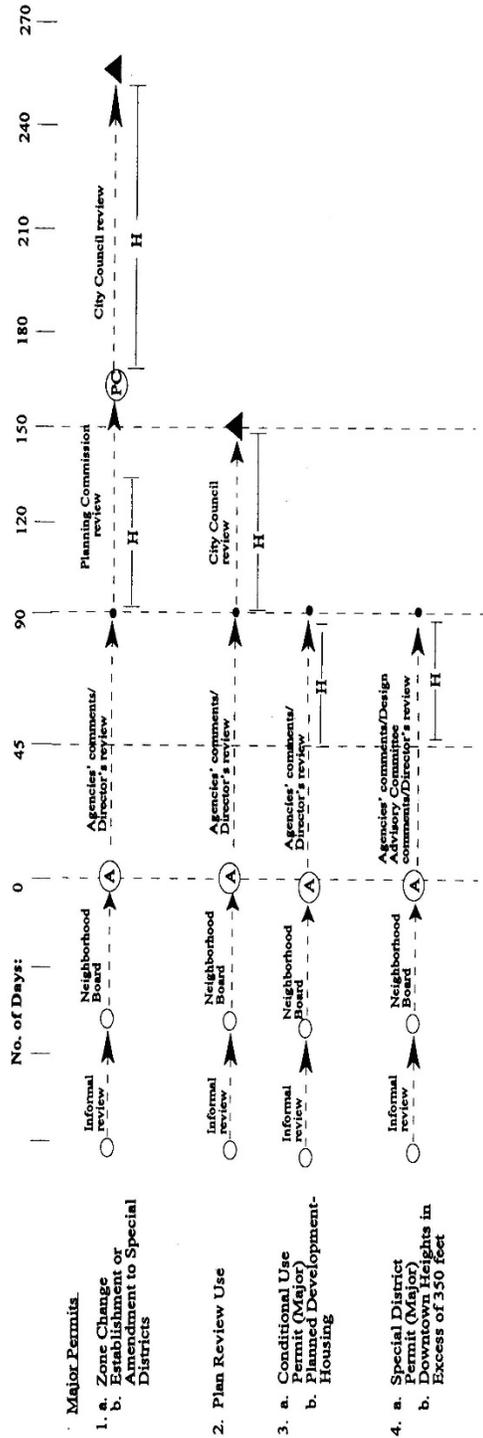
- Deadline for Director's action
- ➔ Variable time period
- (A) Acceptance of completed application

Note: The processing time suggested for each different permit listed on this exhibit is for illustration purposes only and may vary according to individual circumstances. Applicants should refer to the appropriate section of Article 2 for precise time requirements.

¹ Before submitting an application for a minor permit for the following uses, the applicant must request an opportunity to present the project to the appropriate neighborhood board; (a) transmitting antenna mounted on a building or rooftop in a country, residential, A-1 or AMX-1 district or a freestanding antenna structure; (b) meeting facility; (c) day-care facility; or (d) school (elementary, intermediate and high.) See Sec. 21-2.40-1.

² Deadline for Director's action may be extended for permits concerning meeting facilities, day-care facilities and schools (elementary, intermediate and high.) See Sec. 21-2.40-1.

Permit Application Processing Time

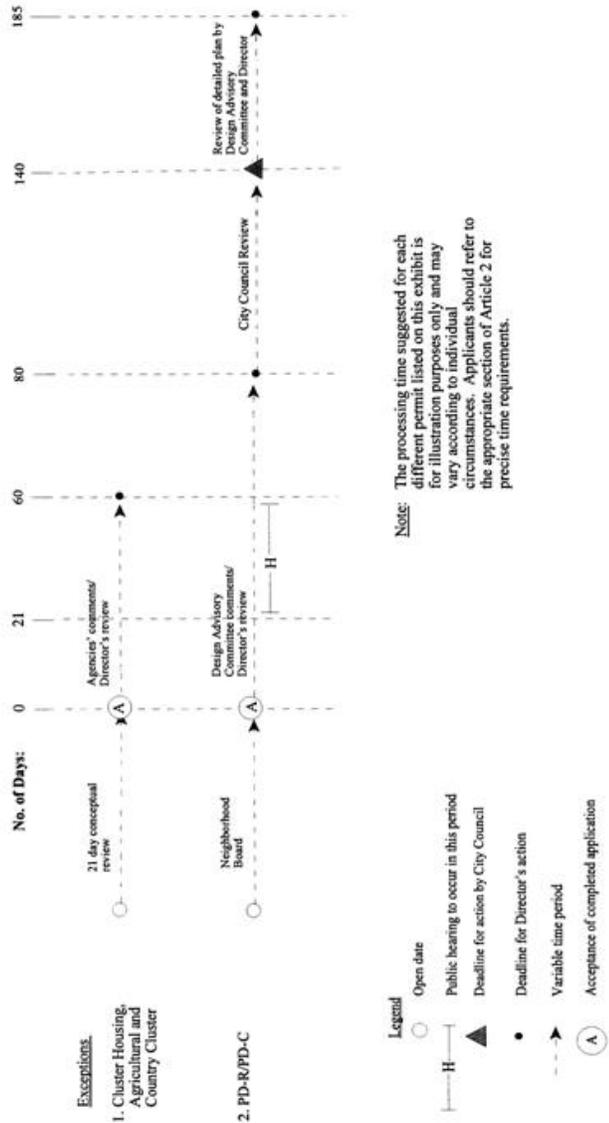


Note: The processing time suggested for each different permit listed on this exhibit is for illustration purposes only and may vary according to individual circumstances. Applicants should refer to the appropriate section of Article 2 for precise time requirements.

- Legend**
- Open date
 - (PC) Deadline for Planning Commission action (30 days from close of public hearing)
 - ▲ Public hearing to occur in this period
 - Deadline for action by City Council
 - Deadline for Director's action
 - Variable time period
 - (A) Acceptance of completed application

Figure 21-2.1 (continued)

Figure 21-2.1 (continued)
PERMIT APPLICATION PROCESSING TIME



Sec. 21-2.40 Permits.

There shall be two categories of permits authorized by this chapter: minor and major. The following sections describe the review and processing of applications for permits and approvals within these two categories. (Added by Ord. 99-12)

Sec. 21-2.40-1 Minor permits.

- (a) Specific Permits. The minor permit category consists of the following permits and approvals:
- (1) Zoning adjustment;
 - (2) Waiver;
 - (3) Existing use permit;
 - (4) Conditional use permit (minor); and
 - (5) Special district permit (minor).

- (b) Preapplication Procedures. Before submitting an application for a minor permit, except an existing use permit, for the following uses:
- (1) Transmitting antenna mounted on a building or rooftop in a country, residential, A-1, or AMX-1 district, or a freestanding antenna structure;
 - (2) Meeting facility;
 - (3) Day-care facility;
 - (4) Schools: elementary, intermediate and high; or
 - (5) Hotel with up to 180 dwelling and/or lodging units in the BMX-3 district;
- the applicant shall first present the project to the neighborhood board of the district where the project will be located, or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of such presentation to owners of all properties adjoining the proposed project. Provided, however, that the requirements of this subsection (b) shall be deemed satisfied if the applicant makes a written request to present the project to the neighborhood board or community association and:
- (A) The neighborhood board or community association fails to provide the applicant with an opportunity to present the project at a meeting held within 60 days of the date of the written request; or
 - (B) The neighborhood board or community association provides the applicant with written notice that it has no objection to the project or that no presentation of the project is necessary.
- (c) Application and Processing. An applicant seeking a minor permit shall submit the appropriate application to the director for processing. Once the director has accepted an application for a conditional use permit (minor) involving a meeting facility, day-care facility, school (elementary, intermediate and high), or hotel with up to 180 dwelling and/or lodging units in the BMX-3 district, adjoining property owners and the appropriate neighborhood board or community association shall be notified of receipt of the application. Adjoining property owners shall be asked whether they wish to have a public hearing on the proposed project, and any potentially adverse external effects of the proposed project on the immediate neighborhood. If, in the judgment of the director, there is sufficient cause to hold a public hearing, the director shall hold a public hearing, which may be held within the area, no sooner than 45 days after acceptance of the completed application. Within 45 days of the director's acceptance of the completed application, the director shall either:
- (1) Approve the application as submitted;
 - (2) Approve the application with modifications and/or conditions;
 - (3) Deny the application and provide the applicant with a written explanation for the denial; or
 - (4) Extend the processing period to 90 days in order to conduct a public hearing for a conditional use permit (minor) involving a meeting facility, day-care facility, school (elementary, intermediate and high), or hotel with up to 180 dwelling and/or lodging units in the BMX-3 district.
- Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director shall have up to 45 days from the date of such amendment to act on the application as provided in this section.

(Added by Ord. 99-12; Am. Ord. 03-37, 13-10)

Sec. 21-2.40-2 Major permits.

- (a) Specific Permits. The major permit category consists of the following permits and approvals:
- (1) Zone change;
 - (2) Establishment of or amendment to special districts;
 - (3) Plan review use;
 - (4) Conditional use permit (major);
 - (5) Special district permit (major);
 - (6) Planned development-housing; and
 - (7) Downtown heights in excess of 350 feet.
- (b) Preapplication Procedures.
- (1) Before the applicant submits an application for a major permit, the department will hold a pre-application meeting with the applicant to conduct an informal review of the project, unless such a meeting is determined to be unnecessary. A project manager may be assigned by the department, and potential issues shall be discussed with the applicant.
 - (2) Before submitting an application for a major permit, the applicant shall first present the project to the neighborhood board of the district where the project will be located, or, if no such neighborhood board exists, an appropriate community association. The applicant shall provide written notice of such presentation to owners of all properties adjoining the proposed project. Provided, however, that the requirements of this subdivision (2) shall be deemed satisfied if the applicant makes a written request to present the project to the neighborhood board or community association and:
 - (A) The neighborhood board or community association fails to provide the applicant with an opportunity to present the project at a meeting held within 60 days of the date of the written request; or
 - (B) The neighborhood board or community association provides the applicant with written notice that it has no objection to the project or that no presentation of the project is necessary.
- (c) Application and Processing.
- (1) An applicant for a major permit shall submit the appropriate application to the department for processing. If the applicant has presented the project to the appropriate neighborhood board or community association pursuant to subsection (b)(2), the application shall be accompanied by a

description of all issues or causes of concern relating to the proposed project, if any, which were identified during the presentation and a statement describing the measures, if any, taken by the applicant to mitigate such issues or concerns.

- (2) An applicant for a major permit which does not require the approval of the city council shall be required to erect a "notice of pending permit" sign on the affected lot(s), subject to the following:
 - (A) The sign shall be nine square feet in area.
 - (B) One sign shall be posted along each street frontage of the lot, and may be posted in a required yard. The sign shall not be obstructed from view by the general public.
 - (C) The sign shall contain the following:
 - (i) The words "Notice of pending land use permit application for (the name of the permit type)";
 - (ii) A summary description of the nature of the request covered by the application;
 - (iii) The name of the applicant or agent, and the address and phone number where the applicant or agent can be contacted;
 - (iv) The date, time and place of the public hearing to be held by the director.
 - (D) The sign shall be erected no less than 14 days before the public hearing date, and shall be removed no more than seven days after the public hearing has been closed.
 - (E) Failure to comply with the requirements of this subdivision may result in the denial of the affected permit application.
 - (F) The sign shall be considered and treated as a "public sign" as provided under Section 21-7.20.
- (3) An applicant for a major permit shall make a good faith effort to notify all owners of property within 300 feet of the affected property's boundaries of the applicant's proposed use of the property as follows:
 - (A) The notification shall be sent within 10 working days of the director's acceptance of a completed application.
 - (B) The notification shall be sent by regular mail.
 - (C) The department shall make available to the applicant a list of all properties and owners located within 300 feet of the affected property.
 - (D) The applicant shall submit an affidavit confirming that the notification requirements have been met.
 - (E) The notification may be made to the respective homeowners board or association of an affected condominium property regime or cooperative housing corporation in lieu of individual owners.

The failure of any person to receive a notice pursuant to this subsection shall not affect the validity of any permit issued under this chapter.
- (4) The director shall submit a written request for comments and recommendations on the application to the pertinent governmental agencies. The agencies shall submit their comments and recommendations in writing to the director within 45 days of receipt of the request.
- (5) If the application is for a special district permit (major) or any major permit regarding downtown heights in excess of 350 feet, the director shall submit the application to the design advisory committee for comment and review. The design advisory committee shall submit its comments and recommendations in writing to the director within 45 days of its receipt of the application.
- (6) If the application is for any major permit which does not require the approval of the city council, the director shall hold a public hearing no earlier than 45 days after the director's acceptance of the completed application. Within 90 days of the director's acceptance of the completed application, the director shall either:
 - (A) Approve the application as submitted;
 - (B) Approve the application with modifications and/or conditions; or
 - (C) Deny the application and provide the applicant with a written explanation for the denial.

Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director shall have up to 90 days from the date of such amendment to act on the application as provided in this subsection.
- (7) If the application is for a plan review use, the director shall, within 90 days of the director's acceptance of a completed application, submit a report to the city council, which shall proceed to process the application according to the provisions of Section 21-2.70. Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director shall have up to 90 days from the date of such amendment to act on the application as provided in this subsection.
- (8) If the application is for (i) the establishment of or amendment to a special district, or (ii) a zone change, the director shall, within 90 days of the director's acceptance of a completed application, either:
 - (A) Deny the application and provide the applicant with a written explanation for the denial;
or
 - (B) Submit a report and a proposed ordinance to the planning commission, which shall proceed to process the application according to the provisions of Section 21-2.70.

Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director shall have up to 90 days from the date of such amendment to act on the application as provided in this subsection.

- (d) Exception When Special Management Area Use Permit Required. When an application for a major permit requires a special management area use permit, the director may extend the deadlines for acting on the application imposed by this section, provided that any such extension shall not extend beyond 10 days after the city council has acted on the special management area use permit.

(Added by Ord. 99-12)

Sec. 21-2.50 Multipermit process.

When a proposed project requires more than one approval in order to be lawfully completed, the applicant may apply for all such approvals concurrently according to the procedures provided in this section.

- (a) The applicant shall submit a one-stop permit application package (OSP) to the director for processing. The OSP shall consist of (i) a completed OSP master application form, (ii) all information required for the individual permits and/or approvals that the applicant is seeking, and (iii) such other information as may be required by the director.
- (b) Upon acceptance of the completed OSP, the director shall designate a project manager from within the department to coordinate the review and processing of the individual permit and/or approval applications comprising the OSP. The project manager shall act as the primary contact person between the director and the applicant concerning the proposed project.
- (c) The individual permit and/or approval applications which comprise the OSP must comply with and shall be processed by the department in accordance with all applicable requirements of this chapter, subject to subsection (d).
- (d) The department will process such OSP within the time provided in this article for the individual permit and/or approval application contained in such OSP which has the longest processing time.
- (e) In the event the OSP contains (i) one or more permit and/or approval applications which require city council approval, and (ii) one or more permit and/or approval applications which require only the director's approval, the director may approve those applications requiring only the director's approval subject to the condition that all other applications requiring city council approval are duly approved by the city council.

(Added by Ord. 99-12)

Sec. 21-2.60 Rules governing director's failure to act within specified time period.

- (a) Subject to subsections (b) and (c), the director may, in accordance with HRS Chapter 91, adopt rules having the force and effect of law which provide that if the director fails to act on applications for (i) a minor permit, (ii) a major permit requiring only the director's approval, or (iii) those portions of a one-stop permit application package (OSP) which require only the director's approval, within the time periods specified in Sections 21-2.40-1(c), 21-2.40-2(c)(6) and -(d), and 21-2.50(d), respectively, the applicable permit requiring only the director's approval shall be deemed approved to the extent that the proposal complies with all applicable laws, regulations, and rules, subject to the following conditions:
- (1) The use and/or development authorized by the permit shall be in general conformance with the project, as shown on plans and/or drawings on file with the department, which shall be deemed the approved plans for the project. Any modification to the project and/or plans shall be subject to the prior review of and approval by the director. Major modifications shall require a new permit; and
- (2) Approval of the permit does not constitute compliance with any other land use ordinance or other governmental requirements, including, but not necessarily limited to, building permit approval, which are subject to separate review and approval. The applicant shall be responsible for insuring that the plans for the project deemed approved under the permit comply with all applicable land use ordinance and other governmental provisions and requirements; and
- (3) The director may impose additional conditions, modify existing conditions, and/or delete conditions deemed satisfied, upon a finding that circumstances related to the approved project have significantly changed so as to warrant a modification to the conditions of the approval; and
- (4) In the event of the noncompliance with any of the conditions of approval, the director may terminate any uses and/or development authorized by the permit, or halt their operation until all conditions are met, or declare the permit null and void, or seek civil enforcement.
- (b) The authority granted to the director pursuant to subsection (a) shall be subject to the following conditions:
- (1) The director may adopt the rules only if required to do so by State law, and then only to the extent required by State law. Any rule which exceeds the requirements of State law shall be null and void. Any rule shall cease to be of any force and effect upon the repeal or judicial voidance of the State law requiring the adoption of the rule; and
- (2) The rules shall not permit any extension of the time periods specified by this Chapter for the director's action, except as follows:
- (A) Extension mandated by State law;
- (B) Extension required to comply with Section 21-2.40-2(d); and
- (C) Upon the prior request of the applicant, one extension of up to 15 days for a minor permit or up to 30 days for a major permit, provided that an extension permitted under this paragraph shall not be combined with an extension permitted under paragraph (B).
- (c) Except to the extent provided by rules adopted pursuant to this section, the failure of the director to act within the specified time periods shall not be deemed an approval of any permit or application.

(Added by Ord. 99-12; Am. Ord. 10-19)

Sec. 21-2.70 Review of planning commission and/or council.

- (a) Plan Review Use. When the application is for approval of a plan review use, the city council shall, within 60 days of receipt of the director's report, hold a public hearing and either:

- (1) Approve the application, in whole or in part, with or without conditions or modifications, by resolution; or
- (2) Deny the application.

If the council does not act on the application as provided in this subsection within such 60-day period, the application shall be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved prior to the requested effective date of the extension.

- (b) Special Districts, Other Amendments to the Land Use Ordinance, and Zone Changes. When the application or proposal is for (i) the establishment of or amendment to a special district, (ii) other amendment to the land use ordinance, or (iii) a zone change (in this subsection collectively referred to as "zoning ordinance proposals"):
 - (1) (A) Other than council-initiated. The planning commission shall hold a public hearing within 45 days of receipt of the director's report and proposed ordinance. Within 30 days of the close of the public hearing, the planning commission shall transmit through the mayor to the council the director's report and proposed ordinance with its recommendations. The mayor shall transmit the director's report, proposed ordinance, and planning commission recommendations to the council within 30 days of receipt of the same from the planning commission.
 - (B) Council-initiated. Planning commission processing and mayoral transmission of zoning ordinance proposals initiated by the council pursuant to Revised Charter Section 6-1513 and Chapter 2, Article 24, including revisions or amendments to this chapter or ordinances designating and redesignating land to one or more zoning districts specified in this chapter, shall be governed by Chapter 2, Article 24.
 - (C) A proposed ordinance prepared by the director as an alternative to a council-initiated zoning ordinance proposal shall be deemed to be initiated by the director and shall be processed in accordance with paragraph (A) above.
- (2) Any person may bring a civil action to enforce any time limit established by subsection (1). The failure to meet any time limit established by subsection (1) shall not render the affected proposal null and void, and the council may act on the proposed ordinance after receipt thereof.
- (3) (A) The council shall hold a public hearing and may act by approving the ordinance as submitted or with modifications, or by denying it.
- (B) For zoning ordinance proposals other than council-initiated proposals, if the council does not take final action within 90 days after receipt of the proposed ordinance from the planning commission, it shall be deemed denied. The applicant may request, and the council may approve, an extension of time if the request is made in writing and approved prior to the requested effective date of the extension.
- (C) For zoning ordinance proposals initiated by the council pursuant to Revised Charter Section 6-1513 and Chapter 2, Article 24, if the council does not take final action prior to the automatic filing of the bill for the proposal pursuant to Section 1-2.4, the proposal shall be deemed denied; provided however, that the council may extend the time for consideration of the proposal one time only by introduction of a new bill for the proposal prior to the automatic filing of the original bill. The new bill shall be identical to the then-current form of the original bill. If the council does not take final action prior to the automatic filing of the new bill, the proposal shall be deemed denied. If more than one new bill is introduced prior to the automatic filing of the original bill, the proposal shall be deemed denied if the council does not take final action prior to the automatic filing of the first new bill.

(Added by Ord. 99-12; Am. Ord. 08-19, 10-19)

Sec. 21-2.80 Conditional zoning--Agreements.

Before the enactment of an ordinance for a zone change, the city council may impose conditions on the applicant's use of the property. The fulfillment of these conditions shall be a prerequisite to the adoption of the ordinance or any applicable part of it.

- (a) The conditions to be imposed must have already been performed before council action on the zone change, or be enforceable by the city to ensure performance after council action. The conditions shall be fulfilled within the time limitation set by the council or, if no time limitation is set, within a reasonable time.
- (b) The conditions shall be imposed only if the council finds them necessary to prevent circumstances which may be adverse to the public health, safety, and welfare.
- (c) The conditions shall be reasonably conceived to fulfill needs directly emanating from the land use proposed in the following respects:
 - (1) Protection of the public from the potentially deleterious effects of the proposed use; or
 - (2) Fulfillment of the need for public service demands created by the proposed use.
- (d) Changes or alterations of conditions shall be processed in the same manner as the zone change.
- (e) The conditions shall be set forth in a unilateral agreement running in favor of the council, acting by and through its chair. No ordinance with conditions shall be effective until the agreement, properly executed, has been recorded with the bureau of conveyances or the land court of the State of Hawaii, or both, as appropriate, so that the conditions imposed by the agreement shall run with the land and shall bind and give notice to all subsequent grantees, assignees, mortgagees, lienors and any other person who claims an interest in such property. The agreement shall be properly executed and delivered to the city prior to council action on the ordinance with conditions; provided, however, that the council may grant reasonable extension in cases of practical difficulty. The agreement shall not restrict the power of the council to rezone with or without conditions. The agreement

shall be enforceable by the city, by appropriate action at law or suit in equity, against the parties and their heirs, successors and assigns.

- (1) Declarants, or the declarant's heirs, successors or assigns, shall prepare and submit to the director an annual report detailing the status of compliance with each condition associated with the agreement, which shall include supporting documentation as appropriate, such as, but not limited to, copies of construction and building permits, copies of deeds and restrictive covenants, financial records, phasing plans, build-out summaries, site plans, master plans, or other relevant information verifying compliance. Failure on the part of the declarant, or the declarant's heirs, successors or assigns, to fulfill this requirement shall be grounds for establishing a violation of this subsection.
 - (2) When the conditions of an agreement have been fully performed and none of the conditions are of a continuing nature, the director may fully release the declarant, or the declarant's heirs, successors or assigns, from the agreement. The director may also execute and record a partial release from the conditions of an agreement upon the successful performance of any specific condition which is not of a continuing nature. Any required fees associated with such a release shall be the responsibility of the declarant, or the declarant's heirs, successors or assigns.
 - (3) The director shall prepare and submit to the council an annual report summarizing the status of compliance with conditions associated with outstanding agreements. This report shall also include a list of agreements for which a full or partial release has been executed by the director for that year, which shall include at least the liber and page or land court document number of the recorded release.
- (f) Failure to fulfill any conditions to the zone change within the specified time limitations may be grounds for the enactment of ordinances making further zone changes upon initiation by the proper parties in accordance with the charter.
- (g) The council may require a bond, in a form acceptable to it, or a cash deposit from the property owner or contract purchaser in an amount that will assure compliance with the conditions imposed. The bond shall be posted at the same time the agreement containing the conditions is recorded with the bureau of conveyances or land court of the State of Hawaii, or both, as appropriate.
- (h) For the enactment of an ordinance for a zone change where conditions are to be imposed on the applicant's use of the property, and there exist applicable conditions associated with an earlier ordinance for a zone change, the preexisting conditions, in whole or in part, may be repealed by the new ordinance for a zone change or incorporated into the new unilateral agreement.

(Added by Ord. 99-12)

Sec. 21-2.90 Conditional use permit--Purpose and intent.

- (a) The purpose of this section is to establish a procedure for permitting certain uses in some zoning districts if certain minimum standards and conditions, which are detailed in Article 5, are met.
- (b) The applicant must demonstrate that the proposed use meets all pertinent standards. The director is further empowered to condition the conditional use permit to ensure compatibility with adjacent uses and structures. When a standard from Article 5 differs from that of the zoning district, the standard from Article 5 shall apply.
- (c) Certain uses may be permitted as principal uses or principal uses with conditions in some zoning districts, but shall be conditional uses in other zoning districts.

(Added by Ord. 99-12)

Sec. 21-2.90-1 Application requirements.

- (a) A developer, owner, or lessee may file an application for a conditional use permit with the director, provided that the conditional use sought is permitted in the particular district.
- (b) The application shall be accompanied by a plan, drawn to scale, showing the actual dimensions and shape of the lot, the sizes and locations on the lot of existing and proposed structures, if any, and the existing and proposed uses of structures and open areas. The director may request additional information relating to topography, access, surrounding land uses and other matters as may reasonably be required in the circumstances of the case. The application shall not be accepted until the information is provided.
- (c) The application shall be processed in accordance with this article subject to the following:
 - (1) When the application is for a conditional use permit (minor) for a meeting facility, day-care facility or school (elementary, intermediate and high), the director shall have the discretion to hold a public hearing on the application upon a determination that there is sufficient justification for such public hearing.
 - (2) If the director holds a public hearing as described in this section, the deadline for the director's action on the application shall be extended from 45 to 90 days from acceptance of the completed application.
 - (3) If the determination is made to hold a public hearing as provided in this section, the applicant shall make a good faith effort to notify all owners of property within 300 feet of the affected property's boundaries of the date, time and place of the public hearing for the applicant's proposed use of the property as follows:
 - (A) The notification shall be sent within 10 working days of the director's written decision notifying the applicant of the date, time and place that the public hearing will be held.
 - (B) The notification shall be sent by regular mail.
 - (C) The department shall make available to the applicant a list of all properties and owners located within 300 feet of the affected property.
 - (D) The applicant shall submit an affidavit confirming that the notification requirements have been met.

- (E) The notification may be made to the respective homeowners board or association of an affected condominium property regime or cooperative housing corporation in lieu of individual owners.

The failure of any person to receive a notice pursuant to this subsection shall not affect the validity of any permit issued under this chapter.

(Added by Ord. 99-12; Am. Ord. 03-37, 10-19)

Sec. 21-2.90-2 General requirements.

- (a) The director may allow a conditional use on a finding that the proposed use satisfies the following criteria:
 - (1) The proposed use is permitted as a conditional use in the underlying zoning district and conforms to the requirements of this chapter.
 - (2) The site is suitable for the proposed use considering size, shape, location, topography, infrastructure and natural features.
 - (3) The proposed use will not alter the character of the surrounding area in a manner substantially limiting, impairing or precluding the use of surrounding properties for the principal uses permitted in the underlying zoning district.
 - (4) The use at its proposed location will provide a service or facility which will contribute to the general welfare of the community-at-large or surrounding neighborhood.
- (b) In addition to the general or specific standards set forth in this chapter concerning the proposed use, which shall be considered minimum requirements with respect to the permit, additional requirements, conditions and safeguards may be added by the director as required for the protection of the public interest in the specific case.
- (c) The director may grant conditional use permits by modifying application of the sign regulations; district regulations relating to yards, landscaping, and lot dimensions; and parking requirements for uses which have an unusual peak-hour parking demand. No such modification shall be made unless the proposed conditional use otherwise meets the requirements of subsections (a) and (b). At no time may the director modify the minimum standards for a specific conditional use.
- (d) In determining whether the proposed conditional use meets the requirements of subsections (a) and (b), the director will, where applicable, consider traffic flow and control; access to and circulation within the property; off-street parking and loading; sewerage; drainage and flooding; refuse and service areas; utilities; screening and buffering; signs; setbacks; yards and other open spaces; lot dimensions; height, bulk and location of structures; location of all proposed uses; hours and manner of operation; and noise, lights, dust, odor and fumes.
- (e) Notwithstanding the requirements of subsections (b) and (c) relating to minimum development standards, in the apartment, apartment mixed use, and business mixed use zoning districts, the director may grant a conditional use permit for special needs housing for the elderly, as defined in this chapter, which may modify district regulations within the limits and subject to the standards established for this conditional use in Article 5.
- (f) For certain conditional use permits, the director may require all or a portion of the site to be dedicated for a minimum of 10 years to active agricultural use. Should the use cease prior to the expiration of the minimum period of dedication, the director may nullify the dedication upon a determination that the permit is revoked or rescinded.

(Added by Ord. 99-12; Am. Ord. 01-12, 02-63, 03-37)

Sec. 21-2.100 Existing uses.

- (a) The purpose of this section is to recognize the hardship imposed upon uses which were legally established, but which now fall under the procedures and standards of the following permits: cluster housing, country cluster, agricultural cluster and conditional use. Subject to the director's approval, the existing use procedure is an option to nonconforming status for qualifying uses. In the event of destruction, uses may be continued and structures may be rebuilt under the approved existing use plan, provided that such restoration is permitted by the building code and flood hazard regulations and is started within two years.
- (b) Existing use approval is subject to the following:
 - (1) The existing uses and associated structures do not substantially limit, impair or preclude the use of surrounding properties for the principal uses permitted in the underlying district. This assessment may include impacts on traffic flow and control, off street parking and loading, sewerage, drainage and flooding, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, lot dimensions, height, bulk and location of structures, hours and manner of operation, noise, lights, dust, odor and fumes.
 - (2) Existing uses and structures shall meet the applicable zoning requirements at the time the uses and structures were approved. They need not meet the current underlying district regulations, nor the minimum development standards of this chapter; however, existing uses that involve dwelling units, other than those associated with a plantation community subdivision, must conform to the requirements relating to minimum land area and maximum number of units specified in Section 21-8.50-2 for cluster housing, in Section 21-3.60-2 for country clusters, and in Section 21-3.50-2 for agricultural clusters, whichever is applicable. For purposes of this subsection, a plantation community subdivision may include housing, and community and/or agricultural support buildings, as provided under HRS Section 205-4.5(a)(12).
 - (3) When granting existing use approval, the director may impose conditions consistent with the purposes of this section and the permit which would otherwise be required.
 - (4) Developments existing on the site shall be considered as an approved plan after review by the director.
 - (5) Minor alterations, additions or modifications may be approved by the director, provided the proposal is consistent with the intent of the respective permit otherwise required by this chapter, and does not

- create adverse land use impacts upon the surrounding neighborhood. Major alterations, additions or modifications shall be processed under the applicable permit.
- (6) Any previous variance, conditional use permit or similar actions granted for the particular use shall continue in effect until superseded.
 - (7) An existing use application shall be processed in accordance with Section 21-2.40-1.

(Added by Ord. 99-12; Am. Ord. 10-19)

Sec. 21-2.110 Exceptions.

The procedures described in Sections 21-2.110-1 through 21-2.110-3 are exceptions to the major/minor permit process, as provided in those respective sections. (Added by Ord. 99-12)

Sec. 21-2.110-1 Cluster housing, agricultural and country clusters.

- (a) Before the submission of a cluster housing, agricultural or country cluster application, the applicant may undergo a 21-day conceptual review of the project by submitting a preliminary site plan drawn to scale showing the approximate location and dimensions of all proposed structures, roadways, common open areas and recreational facilities. Included on the preliminary site plan shall be a conceptual landscaping plan, with existing contours at vertical intervals of five feet where the slope is greater than 10 percent and not more than two feet where the slope is less than 10 percent. Any areas designated for grading shall be indicated and approximate amounts of cut or fill shown.
- (b) This review shall indicate the director's comments on the basic project concept, the number and general location of all dwelling units and other structures, the location of all common areas and the preliminary landscape plan.
- (c) Either after the 21-day conceptual review or as a first action, the applicant may proceed with detailed plans and drawings for the project in compliance with the application requirements listed in Section 21-8.50 10. Within 60 days of acceptance of a completed application, the director shall approve as submitted, approve with modifications and/or conditions, or deny, with reasons for denial sent in writing to the applicant. During this 60-day period, the director shall solicit comments on the project from appropriate agencies. Agencies shall submit comments on the project within 45 days of receipt of the request.
- (d) If the development requires a special management area use permit, the time limit may be extended by the director, for a period not to exceed 10 working days after action has been taken on the special management area use permit by the council.

(Added by Ord. 99-12)

Sec. 21-2.110-2 Planned development-resort, planned development-apartment, and interim planned development-transit projects.

- (a) Applications for approval of planned development-resort (PD R) and planned development-apartment (PD-A) projects in the Waikiki special district, and interim planned development-transit (IPD-T) projects, shall be processed in accordance with the following subsections.
- (b) Preapplication Procedures. Before the submission of an application, the applicant shall:
 - (1) For IPD-T projects, attend a pre-application meeting with the department to conduct an informal review of the project, unless the department determines that such a meeting is unnecessary. The applicant shall be prepared to discuss how the project can accomplish the goals and objectives of Section 21-9.100-4 and:
 - (A) The approved neighborhood TOD plan for the affected area; or
 - (B) If the neighborhood TOD plan has not yet been approved, the draft neighborhood TOD plan. As used in this section, "draft neighborhood TOD plan" means the most current version of the plan then under consideration by the department or the council, commencing with the first public review draft released by the director to the community for review and comment;
 - and
 - (2) Present the proposal to the neighborhood board in whose district the project is to be located. Notice of the presentation, or the applicant's good faith efforts to make such a presentation, shall be given to all owners of properties adjoining the proposed project.
- (c) Upon acceptance of the completed application by the director, the director shall notify the council of the acceptance, providing the council with the date of the director's acceptance of the application and a brief description of the proposal contained in the application. The director shall hold a public hearing concerning the conceptual plan for the project at a date set no less than 21 nor more than 60 calendar days after the date on which the completed application is accepted, unless the 60-day period is waived by the applicant. This hearing may be held jointly and concurrently with any other hearing required for the same project. The director shall give written notice of the public hearing to the neighborhood board in whose district the project is to be located no less than 15 days prior to the public hearing.

For IPD-T projects, a complete application must demonstrate how the project achieves consistency with:

 - (1) The approved neighborhood TOD plan for the affected area; or
 - (2) If the neighborhood TOD plan has not yet been approved, the draft neighborhood TOD plan.
- (d) Except for applications for IPD-T projects, the conceptual plan for the project shall also be presented to the design advisory committee for its appropriate recommendations prior to transmittal of the application to the council for a conceptual plan review and approval.
- (e) Upon conclusion of the public hearing and (except for IPD-T projects) design advisory committee review, and not more than 80 days after acceptance of the application, unless the applicant waives the 80-day period, the director shall submit a report and recommendations to the council.

- (f) The council shall approve the conceptual plan for the project, in whole or in part, with or without conditions or modifications, by resolution, or shall disapprove the conceptual plan. The council may disapprove the conceptual plan by resolution, but if the council does not take final action within 60 days after its receipt of the application, the application shall be deemed denied. The applicant may request, and the council may approve, an extension of time if it is made in writing, prior to the requested effective date of the extension. An application for council approval of a conceptual plan for a PD-R, PD-A, or IPD-T project may be processed concurrently with development plan amendments under Chapter 24, special management area use permits under Chapter 25, and zoning district changes.
- (g) If the council approves the conceptual plan for the project, the application, as approved in concept by the council, shall continue to be processed for further detailed review and final action by the director.
 - (1) The director shall present the detailed plan for the project to the design advisory committee for its recommendation, except in the case of IPD-T projects.
 - (2) Within 45 days of council approval, the director shall approve the application in whole or in part, with or without conditions or modifications, or deny the application, with reasons for final action set in writing to the applicant.
 - (3) The applicant may request in writing to the director an extension of time as may be necessary for good cause.
- (h) A final approval by the director shall be considered a major special district permit for the project, notwithstanding that the application has been processed in accordance with this section and not Section 21-2.40-2.

(Added by Ord. 99-12; Am. Ords. 11-30, 14-10)

Sec. 21-2.110-3 Designation of ohana-eligible areas.

The procedures for designating ohana-eligible areas shall be as provided in Section 21-8.20-1(a) and the rules adopted pursuant thereto. (Added by Ord. 99-12)

Sec. 21-2.120 Plan review uses--Purpose and intent.

- (a) The purpose of this section is to establish a review and approval mechanism for uses of a permanent and institutional nature which, because of characteristics fundamental to the nature of the use, provide essential community services but which could also have a major adverse impact on surrounding land uses.
- (b) It is the intent that the design and siting of structures and landscaping, screening and buffering for these uses be master planned so as to minimize any objectionable aspects of the use or the potential incompatibility with other uses permitted in the zoning district.

(Added by Ord. 99-12)

Sec. 21-2.120-1 Applicability.

- (a) Plan review use (PRU) approval shall be required for the following public and private uses: hospitals, prisons, airports, colleges and universities (except business schools and business colleges), trade or convention centers, and those golf courses described in subsection (d).
- (b) This section is applicable to all of the uses in subsection (a), in all zoning districts and special districts.
- (c) Trade or convention centers shall not be approved as a plan review use in any residential zoned district.
- (d) Golf courses.
 - (1) If, following rezoning of land planned for golf course use to P-2 preservation district either:
 - (A) A grading permit has not been issued for the golf course within two years of the rezoning; or
 - (B) A grading permit that was issued within two years of the rezoning has expired due to suspension or abandonment of work, or is revoked, then the golf course shall require PRU approval.
 - (2) Golf courses shall be permitted as a plan review use in the P-2 preservation district only when consistent with the city's development plans. Golf courses on P-2 zoned land shall be deemed consistent with the development plans only when situated on lands designated preservation, parks and recreation, or golf courses on the development plan land use maps.
 - (3) Uses accessory to a golf course shall be designed and scaled to meet only the requirements of the members, guests or users of the facility.
 - (4) In addition to the general provisions of Section 21-2.120-2, PRU approval of requests for golf courses may be based on the additional criteria enumerated in Section 21-5.280.

(Added by Ord. 99-12)

Sec. 21-2.120-2 General provisions.

- (a) A proposed master plan spanning at least five years shall be submitted by the applicant for a PRU and shall be accompanied by a review and comment from all applicable city, state and federal planning and development agencies. The application and proposed master plan shall encompass the entire lot or the entirety of all lots for which the PRU is applied.
- (b) The master plan shall be approved by city council resolution. The approved master plan shall apply to the entire lot or the entirety of all lots for which the PRU is approved. No uses or structures, other than the uses and structures in the approved master plan, shall be permitted on the lot or lots. The master plan may consist of both existing and future development. Future development in the plan shall indicate general height and bulk concepts, land expansion, landscaping, setbacks and buffering of adjacent parcels.
- (c) Density, height and yards shall be determined by taking into consideration the surrounding land use, adopted land use policy and applicable zoning regulations.

- (d) Parking, loading and sign requirements shall be specified in the approval of the plan.
- (e) The director shall approve drawings before building permits are issued, in accordance with the approved plan. Amendments to the plan, other than those of minor impact, shall require council approval; the director may approve minor amendments to the plan.

(Added by Ord. 99-12)

Sec. 21-2.120-3 Application requirements.

- (a) An applicant for a PRU shall submit to the director an application, accompanied by:
 - (1) A location map showing the development in relation to the surrounding area.
 - (2) A site plan drawn to scale showing:
 - (A) Property lines and easements with dimensions and area.
 - (B) Location, size, spacing, setbacks and dimensions of all existing and proposed buildings, structures, improvements and utilities.
 - (C) The building elevations, sections and floor plan and site sections to clearly define the character of the development.
 - (D) Topographic information showing existing features and conditions and proposed grading.
 - (E) Landscaping plans showing open spaces, planting and trees.
 - (F) Existing streets showing access to the project, proposed roads and parking layout with dimensions.
 - (G) Shoreline, shoreline setback lines, stream and other setback lines.
 - (3) Information regarding land use designations, surrounding land uses and development schedules.
 - (4) Information on the following:
 - (A) The manner in which the plan makes adequate provision for public services, provides adequate control over vehicular traffic and furthers the amenities of light and air.
 - (B) The relationship, beneficial and adverse, of the proposed development to the neighborhood in which it is established.
 - (C) Confirmation from applicable public agencies that sewer, water and drainage facilities are or will be available and adequate, before the construction of the proposed development.
 - (D) Project justification.
 - (E) Existing and projected number of employees, teachers, students, residents or patients, as appropriate.
 - (F) Planned hours of operation.
- (b) No application for an amendment to an existing PRU or for a new PRU to supersede an existing PRU shall be accepted by the director if:
 - (1) The application, if approved, would result in a master plan spanning a period which extends beyond the term of the master plan approved by the existing PRU; and
 - (2) One or more conditions of the existing PRU which are due to be performed (other than conditions of a continuing nature whose performance is current) have not been fully performed.

(Added by Ord. 99-12)

Sec. 21-2.130 Waiver of requirements.

- (a) A waiver of the strict application of the development or design standards of this chapter may be granted by the director for the following:
 - (1) Public or public/private uses and structures, and utility installations.
 - (2) To permit the creation of lots designated for landscaping and open space purposes which do not meet minimum lot area and/or dimensions.
 - (3) To permit the replacement of existing improvements on private property when the improvements are, or have been, rendered nonconforming through the exercise of government's power of eminent domain on or after October 22, 1986, which for the purposes of this provision may also include requirements under Chapter 14, Article 21, and/or the establishment of street setback lines.
 - (4) To permit the retrofitting of improvements when the retrofitting is required to comply with federal mandates such as, but not limited to, the Americans with Disabilities Act (ADA) or the National Environmental Protection Act (NEPA); provided such improvements cannot otherwise be made without conflicting with the provisions of this chapter.
 - (5) In the residential, apartment, and apartment mixed use zoning districts, when a zoning lot is subject to a street setback line, the director may reduce the front and/or rear yard requirement by up to 30 percent, on the following conditions:
 - (A) The zoning lot does not meet applicable minimum development standards for lot area, lot width, or lot depth, either in its current configuration or after the street setback is taken; and
 - (B) The appropriate agency or agencies concur in the reduction.
- (b) The granting of the waiver shall not, under the circumstances and conditions applied in the particular case, adversely affect the health or safety of persons, and shall not be materially detrimental to the public welfare or injurious to nearby property improvements. The burden of proof in showing the reasonableness of the proposed waiver shall be on the applicant seeking it.
- (c) This provision shall not be applicable to uses which fall under Section 21-2.120.

(Added by Ord. 99-12; Am. Ord. 03-37)

Sec. 21-2.140 Zoning adjustments.

The purpose and intent of this section is to permit minor zoning adjustments where practical difficulties or results inconsistent with the general purpose of this chapter would occur from its strict literal interpretation. The adjustment review process provides a mechanism by which regulations may be modified to provide flexibility for unusual situations and to allow for alternative ways to meet the purposes of this chapter, while continuing to provide certainty and efficient processing for land use applications. (Added by Ord. 99-12)

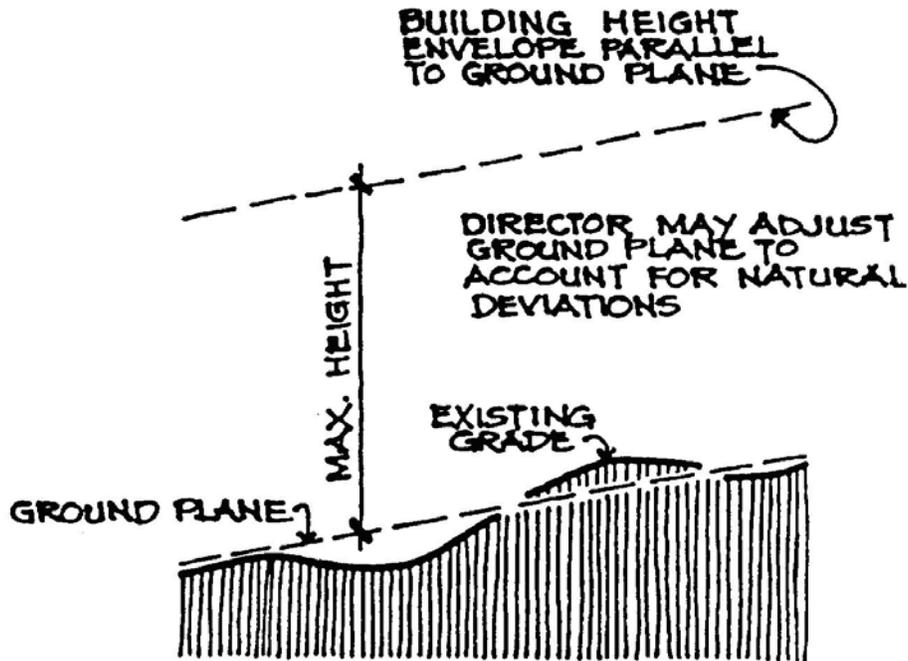
Sec. 21-2.140-1 Specific circumstances.

The director may grant an adjustment from the requirements of this chapter under the following circumstances:

- (a) Carports and Garages.
 - (1) When located in a residential district, a one-car or two-car carport or garage may encroach into required front and/or side yards, including those in special districts, only under the following conditions:
 - (A) That no other viable alternative site exists relative to the location of an existing dwelling (including additions), legally constructed prior to October 22, 1986, and/or to the topography of the zoning lot; and
 - (B) That the landowner must authenticate the nonconformity of the existing dwelling, carport or garage, if necessary.Any carport or garage covered by this subsection shall not be converted to or be used for a use other than a carport or garage.
 - (2) The maximum horizontal dimensions for the carport or garage shall generally not exceed 20 feet by 20 feet, except that the dimensions may be reasonably increased to accommodate an existing retaining wall or similar condition.
- (b) Energy-saving Rooftop Designs. Rooftop designs which incorporate energy-saving features, such as, but not necessarily limited to, vented ceilings and louvered skylights, may extend above the governing district height limit or height setback by not more than five feet, provided:
 - (1) The building is not a detached dwelling unit or duplex.
 - (2) The proposal shall be subject to design review. The roofing treatment shall be attractive, give deference to surrounding design, and be an integral part of the design scheme of the building.
- (c) Flag Lot Access Width. Where unusual terrain or existing development does not allow the required access drive, the director may (i) adjust the minimum access width to no less than 10 feet, and (ii) allow more than dual access to an access drive, provided that the following criteria are met:
 - (1) The appropriate government agencies do not object to the proposal;
 - (2) No more than 3 flag stems or access drives are located adjacent to one another, the access drive(s) do not serve more than 5 dwelling units, and the combined access drive pavement width does not exceed 32 feet; and
 - (3) When more than dual access to a flag stem(s) or access drive(s) is proposed, the design results in one common driveway and one curb cut to serve all lots adjoining the flag stem(s).
- (d) Grade Irregularities. Where unusual natural deviations occur in grade, the director may adjust the building height envelope to permit reasonable building design. An adjustment shall be made only in accordance with the intent of the pertinent district regulations (See Figure 21-2.2).

Figure 21-2.2

ZONING ADJUSTMENT: GRADE IRREGULARITIES



- (e) Lanai Enclosures. Lanais, which are a part of buildings constructed on or before October 22, 1986 which have reached the maximum permitted floor area, may be enclosed if they meet all of the following criteria:
 - (1) The enclosure meets a unified design scheme approved by either the condominium association or the building owner, whichever is applicable;
 - (2) Other lanais in the building have been similarly enclosed; and
 - (3) Lanais which have already been enclosed have been done so legally.
- (f) Loading Requirements--Joint Use. The director may adjust the number of loading spaces to 50 percent of the required number when such spaces are to be jointly used by two or more uses on the same zoning lot; provided that:
 - (1) Each use has access to the loading zone without crossing driveways, public streets or sidewalks;
 - (2) All joint loading spaces are in reasonable proximity to the uses they serve, and can be jointly used without disrupting other activities on the lot; and
 - (3) The adjustment shall not be used to reduce the loading available for any single use below the minimum required for that use.
- (g) Loading Requirements--Low-rise Multifamily Dwellings. The director may adjust or waive the loading requirement for low-rise multifamily dwellings provided that:
 - (1) The project consists of more than one building;
 - (2) Buildings do not exceed three stories; and
 - (3) There is sufficient uncovered parking and aisle or turnaround space to accommodate occasional use for loading.
- (h) Off-street Parking and Loading Requirements Upon Change in Use.
 - (1) Change in Use on Zoning Lot With Conforming Parking and Loading. Notwithstanding Article 6, if there is a change in use on a zoning lot, with no increase in floor area, which would otherwise require the addition of no more than three parking spaces and/or no more than one loading space, then the director may adjust the number of additional parking or loading spaces required, on the following conditions:
 - (A) There are no reasonable means of providing the additional parking and/or loading spaces which would otherwise be required, including but not limited to joint use of parking facilities and off-site parking facilities;

- (B) There was no previous change in use on the zoning lot to a use with higher parking or loading standard during the five-year period immediately preceding the change in use;
 - (C) There was no previous grant of an adjustment from parking and loading requirements on the zoning lot pursuant to this subdivision; and
 - (D) The parking and loading shall thereafter be deemed to be nonconforming.
- (2) Change in Use on Zoning Lot with Nonconforming Parking and Loading. Notwithstanding Section 21-4.110(e)(1), if there is a change in use on a zoning lot, with no increase in floor area, which would otherwise require the addition of no more than three parking spaces and/or no more than one loading space, nonconforming parking and loading may be continued, with no additional parking or loading spaces being required, on the following conditions:
- (A) There are no reasonable means of providing the additional parking and/or loading spaces which would otherwise be required, including but not limited to joint use of parking facilities and off-site parking facilities;
 - (B) There was no previous change in use on the zoning lot to a use with a higher parking or loading standard during the five-year period immediately preceding the change in use; and
 - (C) There was no previous grant of an adjustment from parking and loading requirements on the zoning lot pursuant to this subdivision or subdivision (1).
- (i) Ohana Dwellings.
- (1) Rebuilding. Any ohana dwelling unit that is destroyed by any means to the extent of more than 50 percent of the unit's replacement value may be rebuilt to its previously existing dwelling type under the following conditions:
- (A) It can be demonstrated that the ohana dwelling unit was legally constructed.
 - (B) It can be demonstrated that the replacement ohana dwelling unit will meet all current underlying district standards including but not limited to height limits, required yards and setbacks, maximum building area and parking.
 - (C) Any ohana dwelling unit rebuilt under the provisions of this subdivision (1) shall not be expanded to increase the floor area beyond the larger of:
 - (i) The floor area shown on approved building plans prior to its destruction; or
 - (ii) The floor area allowable under the current maximum building area development standard in the applicable zoning district.
- (2) Expansion.
- (A) Notwithstanding subdivision (1), an ohana dwelling unit owned under the provisions of HRS Chapter 514A may be expanded; provided that:
 - (i) The declaration of condominium property regime or declaration of horizontal property regime was filed with the bureau of conveyances of the State of Hawaii on or before December 31, 1988; and
 - (ii) The building permit was issued prior to April 28, 1988, the effective date of Ordinance No. 88-48 which placed floor area restrictions on ohana dwellings.
 - (B) Expansion of an ohana dwelling unit pursuant to this subdivision (2) is subject to the following conditions:
 - (i) The maximum building area for each dwelling unit on the zoning lot shall not exceed the ratio of that unit's proportionate share of the common interest to the total common interest of all units on the same zoning lot multiplied by the maximum building area of the zoning lot. The common interest shall be as specified in the applicable condominium property regime documents.
 - (ii) Any such expansion shall conform to yard requirements and other development standards for the applicable zoning district.
 - (iii) In the event the maximum building area has already been reached or exceeded, no additional expansion shall be permitted.
- (3) Notwithstanding the provisions of Section 21-8.20(c), requiring all new ohana units to be attached units, detached ohana dwelling units for which the building permit was issued prior to September 10, 1992 may be rebuilt and/or expanded as provided by subdivisions (1) and (2).
- (j) Receive-only Antenna Height. Receive-only antennas may exceed the governing height limit under the following conditions:
- (1) The zoning lot is not located in a residential district where utility lines are predominantly located underground; and
 - (2) The applicant shall provide evidence to the director that adequate reception by the antenna, for the purposes for which the antenna is designed, cannot be provided anywhere on the zoning lot at or below the zoning district height limit, and the antenna shall not extend above a height greater than is shown by evidence provided to the director to be necessary to provide adequate reception, and in no case shall the antenna extend more than 10 feet above the governing height limit; or
 - (3) A receive-only antenna may be placed on top of an existing structure where the height of the structure is nonconforming, provided the antenna shall not extend above the height of the structure by more than 10 feet.
- (k) Residential Height. The director may adjust the second plane of building height envelope up to a maximum of 35 feet, only under the following conditions:
- (1) The lot has a slope greater than 40 percent;
 - (2) There is no other reasonable development alternative without an increase in the height envelope; and

- (3) The lot shall be limited to dwelling use.
- (l) **Retaining Walls.** The director may adjust the maximum height of the retaining wall on a finding that additional height is necessary because of safety, topography, subdivision design or lot arrangement and the aesthetic impact of the wall would not be adverse to the neighborhood and community as viewed from any street. The director may impose reasonable conditions when granting this additional height, such as type of materials and colors, landscaping, terracing, setbacks and offsets, as may be necessary to maintain the general character of the area.
- (m) **Rooftop Height Exemption.** Rooftop structures which principally house elevator machinery and air conditioning equipment may extend above the governing district height limit for structures or portions of structures, provided they meet the following conditions:
- (1) If the elevator cab opens on the roof, machinery may not be placed above the elevator housing.
 - (2) The highest point of the rooftop structures shall not exceed five feet above the highest point of the equipment structures. Rooftop structures principally housing elevator machinery or air conditioning equipment which was installed under a building permit issued before February 9, 1993, shall be permitted even if they exceed the 18-foot limit of Section 21-4.60(c)(1) so long as they do not exceed five feet above the highest point of the equipment structure.
 - (3) The building is not located in a special district. If the building is located in a special district, the special district requirements shall prevail.
 - (4) The proposed rooftop structures shall be subject to design review. The design shall be attractive, give deference to surrounding design, and be an integral part of the design scheme of the building.
 - (5) Areas proposed to be covered by the rooftop structure will not be counted as floor area, provided they are not used for any purpose except covering rooftop machinery. Areas used for purposes other than reasonable aesthetic treatment shall be counted as floor area.
- (n) **Sign Master Plan.** A sign master plan is a voluntary, optional alternative to the strict sign regulations of this chapter, intended to encourage some flexibility in order to achieve good design (including compatibility and creativity), consistency, continuity and administrative efficiency in the utilization of signs within eligible sites. Under this alternative, and subject to the provisions of this subsection, the director may approve a sign master plan that permits the exceptions to the sign regulations of this chapter set forth in subdivision (2).
- (1) **Eligibility.** Developments with three or more principal uses on a zoning lot, other than one-family or two-family detached dwellings or duplex units, shall be eligible for consideration of a zoning adjustment for a sign master plan. An applicant must have the authority to impose the sign master plan on all developments on the zoning lot.
 - (2) **Flexibility.** The following exceptions to the sign regulations of this chapter may be permitted pursuant to an approved sign master plan.
 - (A) **Physical Characteristics.** The maximum number of permitted signs, sign area, and the height and physical dimensions of individual signs, may be modified; provided:
 - (i) No sign shall exceed any applicable standard relating to height or dimension by more than 20 percent;
 - (ii) The total permitted sign area for signs which are part of a sign master plan shall not be increased by more than 20 percent beyond that otherwise permitted by the underlying sign regulations for the site; and
 - (iii) The total number of signs which are part of a sign master plan shall not exceed 20 percent of the total number of signs otherwise permitted by the underlying sign regulations for the site; provided that when computation of the maximum number of permitted signs results in a fractional number, the number of allowable signs shall be the next highest whole number.
 - (B) **Sign Types.** The types of business signs permitted for ground floor establishments may include hanging, marquee fascia, projecting, roof and wall signs.
 - (i) When marquee fascia signs are to be utilized, the signs may be displayed above the face of the marquee, provided the signs shall not exceed a height of more than 36 inches above the marquee face.
 - (ii) When wall signs are to be utilized, signs displayed as individual lettering placed against a building wall are encouraged.
 - (C) **Sign Illumination.**
 - (i) Where direct illumination is not otherwise permitted by the underlying sign regulations for the site, sign copy and/or graphic elements of business and/or identification signs for ground floor establishments may be directly illuminated, provided any remaining sign area shall be completely opaque and not illuminated.
 - (ii) Signs for second floor establishments may be indirectly illuminated.
 - (D) **Sign Location.** An appropriate, consistent pattern for the placement of regulated signs within the project site shall be approved in the sign master plan, provided all signs shall be located on the building containing the identified establishment, and no ground sign shall be located within a required yard except as may be permitted by this chapter.
 - (E) The standards and requirements for directional signs, information signs and parking lot traffic control signs may be established by the director, as appropriate.
 - (3) **Sign Master Plan Approvals.** The director may approve a sign master plan only upon a finding that, in addition to the criteria set forth in Section 21-2.140-2, the following criteria have been met:
 - (A) The proposed sign master plan will accomplish the intent of this subsection;

- (B) The size and placement of each sign will be proportional to and visually balanced with the building facade of the side of the building upon which it is maintained;
 - (C) All signs regulated by this chapter and maintained upon the site will feature the consistent application of not less than one of the following design elements: materials, letter style, color, shape or theme; and
 - (D) In all respects not adjusted by the sign master plan, all signs regulated by this chapter and maintained upon the site will conform to the provisions of this chapter.
- The director may impose conditions and additional controls as may be appropriate.
- (4) Implementation.
 - (A) The director shall maintain a copy of the approved sign master plan for each project to facilitate the expedited processing of sign permits for that project. The director shall review each sign permit application for an individual sign within an affected project for its conformity to the approved sign master plan. Upon determining that the sign permit application conforms to the approved sign master plan, the director shall issue the sign permit for the sign.
 - (B) Except as otherwise provided in this paragraph (B), no sign shall be maintained upon a site subject to an approved sign master plan unless the sign conforms to the sign master plan. If a site has existing signs which will not conform to the approved sign master plan, the master plan shall specify a reasonable time period, as approved by the director, for conversion of all existing signs to the design scheme set forth in the approved master plan, provided that in no event shall the time period for full conformance exceed one year from the date of approval of the sign master plan.
 - (o) Conversion of accessory structures. An existing, legally established, accessory structure constructed prior to September 14, 2015, in the country or residential district may be converted to an accessory dwelling unit and allowed to exceed the maximum floor area established by Section 21-5.__(c)(1) and/or be exempted from the off-street parking requirement established by Section 21-5.__(c)(4) and contained in Table 21-6.1 subject to the following conditions:
 - (1) Provided the director finds that viable constraints do not allow the reduction of the floor area of the existing accessory structure.
 - (2) Provided that the director finds that no feasible alternative off-street parking site exists due to the placement of structures on, and/or the topography of, the zoning lot.

(Added by Ord. 99-12; Am. Ord. 99-63, 03-37, 06-15, 09-5, 10-19, 15-41)

Sec. 21-2.140-2 Criteria.

- (a) A zoning adjustment shall be approved on a finding that the following criteria have been met:
 - (1) Approving the adjustment will meet the purpose and intent of the regulation to be modified;
 - (2) The proposal will not significantly detract from the livability or appearance of the area and is consistent with the desired character of the area;
 - (3) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose and intent of the zoning district; and
 - (4) Any impacts resulting from the adjustment are mitigated to the extent practical.
- (b) An applicant may request a zoning adjustment under the specific circumstances described in Section 21-2.140-1. The adjustment request shall be filed with the department with supporting materials describing the requested adjustment and documenting the manner in which the proposed project qualifies for the adjustment and meets the criteria specified in subsection (a). A request for an adjustment shall be approved by the director on a finding that all criteria for the adjustment are satisfied.

(Added by Ord. 99-12)

Sec. 21-2.150 Violation.

Any approval or permit issued pursuant to the provisions of this chapter shall comply with all applicable requirements of this chapter. Failure to comply with conditions imposed as part of any approval or permit, including variances from the provisions of this chapter, shall constitute a violation of this chapter. (Added by Ord. 99-12)

Sec. 21-2.150-1 Criminal prosecution.

- (a) Any person convicted of a violation of this chapter, as amended, shall be sentenced as follows:
 - (1) For a first offense, by a fine not exceeding \$1,000.00 and one of the following:
 - (A) Thirty two hours of community service, as authorized by and defined in HRS Section 706-605(1)(e), as amended; or
 - (B) Forty eight hours' imprisonment.
 - (2) For a second conviction which occurs within five years of any prior conviction for violation of this chapter, by a fine not exceeding \$1,000.00 and one of the following:
 - (A) Sixty four hours of community service, as authorized by and defined in HRS Section 706-605(1)(e), as amended; or
 - (B) Ninety six hours' imprisonment.
 - (3) For a subsequent conviction which occurs within five years of any two prior convictions under this chapter, by a fine of not less than \$500.00 but not exceeding \$1,000.00 and one of the following:
 - (A) Not less than 64 hours but not exceeding 140 hours of community service as authorized by and defined in HRS Section 706-605(1)(e), as amended; or
 - (B) Not less than 96 hours but not exceeding 30 days' imprisonment.

- (b) After a conviction for a first violation under this chapter, each further day of violation shall constitute a separate offense if the violation is a continuance of the subject of the first conviction.
- (c) The imposition of a fine under this section shall be controlled by the provisions of the Hawaii Penal Code relating to fines, HRS Sections 706-640 through 706-645.
- (d) The city may maintain an action for an injunction to restrain any violation of the provisions of this chapter and may take any other lawful action to prevent or remedy any violation.
- (e) Any authorized personnel may arrest, without warrant, alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by penal summons, by complaint, by warrant or such other judicial process as is permitted by statute or rule of court.
- (f) Any authorized personnel making an arrest for a violation of this chapter may take the name and address of the alleged violator and shall issue to the alleged violator a written summons or citation, notifying the alleged violator to answer at a place and at a time provided in the summons or citation.
- (g) There shall be provided for use by authorized personnel a form of summons or citation for use in citing violators of this chapter which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid under the laws and regulations of the State of Hawaii and the City and County of Honolulu.
- (h) In every case when a citation is issued, the original of the same shall be given to the violator, provided, that the administrative judge of the district court may prescribe the giving to the violator of a carbon copy of the citation and provide for the disposition of the original and any other copies.
- (i) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(Added by Ord. 99-12)

Sec. 21-2.150-2 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by mail or delivery, with a notice of violation and order pursuant to this section.

- (a) Contents of the Notice of Violation. The notice shall include at least the following information:
 - (1) Date of the notice;
 - (2) The name and address of the person noticed;
 - (3) The section number of the provision or rule, or the number of the permit which has been violated;
 - (4) The nature of the violation; and
 - (5) The location and time of the violation.
- (b) Contents of Order.
 - (1) The order may require the person to do any or all of the following:
 - (A) Cease and desist from the violation;
 - (B) Correct the violation at the person's own expense before a date specified in the order;
 - (C) Pay a civil fine not to exceed \$1,000.00 in the manner, at the place and before the date specified in the order;
 - (D) Pay a civil fine not to exceed \$1,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
 - (2) The order shall advise the person that the order shall become final 30 days after the date of its mailing or delivery. The order shall also advise that the director's action may be appealed to the zoning board of appeals.
- (c) Effect of Order--Right to Appeal. The provisions of the order issued by the director under this section shall become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Section 6-1516 of the city charter. However, an appeal to the zoning board of appeals shall not stay any provision of the order.
- (d) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.